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Pesticides & Toxic Substances Law News for May 7, 2018

**Bloomberg
Environment**

Environment & Energy

Highlights

LEADING THE NEWS

[Fourth Pruitt Aide Leaving Amid Swirling Controversy at EPA](#)

By Jennifer A. Dlouhy

A fourth departure this week of an Environmental Protection Agency official, announced May 4, may suggest continued fallout from the controversies swirling around Administrator Scott Pruitt.

TODAY'S NEWS

[Industry Heated as EPA Stays Silent on Global Coolant Deal](#)

By Abby Smith

Appliance manufacturers and chemical makers have had enough of the Trump administration's silence on a global deal to reduce climate-warming coolants, and they've got a message for the EPA: Speak up.

TUESDAY NIGHT WRAPUP

[EPA's Inaction on Pesticide Training Draws Watchdog Probe](#)

By Sam Pearson and Ayanna Alexander

EPA regulators haven't issued a notice that improved training materials are available to prevent farm worker exposure to pesticides. Now the agency's inspector general wants to know why.



Redefining EPA

Overhauling an agency and its mission

<https://insideepa.com/agency-at-a-crossroads>

TSCA Tracker

<http://insideepa.com/specials/tsca-tracker>

Latest News

[EPA Rule Deadline Tracking System May Help Avoid 'Sue-And-Settle' Rules](#)

EPA is creating a system to track all its statutory rulemaking deadlines to support its goal of meeting every binding deadline by 2022, a goal that could help the agency avoid "sue and settle" agreements imposing new deadlines for agency action but one that EPA's Chief of Operations Henry Darwin acknowledges is a "heavy lift."

[EPA Appears Unlikely To Quickly Set PFAS Standard, Despite DOD Calls](#)

EPA appears unlikely to quickly develop and adopt an enforceable drinking water standard for any perfluorinated chemicals as some lawmakers, states and others are seeking, despite calls from the Defense Department (DOD), which may be responsible for hundreds of contaminated water supplies, for a consistent national standard to preempt a patchwork of state limits.

[Growing Citizen Coalition Pushing For National Cleanup Standard For PFAS](#)

A growing coalition of local citizen groups living in areas with perfluorinated chemical-contaminated water supplies is pushing for both state drinking water standards to address contamination as well as federal enforceable standards that would set protection levels for all chemicals in the class of

per- and polyfluoroalkyl substances (PFAS).

EPA Seeks To Speed Pesticide Reviews As Industry Backs ESA Reprieve

EPA pesticides officials are seeking to streamline their process for re-registering pesticides, citing limited resources and the Trump administration's push for greater efficiency, though industry is backing a House farm bill that would extend the agency's registration review deadlines to allow time to craft a new process for assessing risks to endangered species.

Daily Feed

Ewire: Another Pruitt travel plan draws scrutiny

Pruitt is facing new criticisms after details emerged that another lobbyist was planning another costly foreign trip for the administrator.

Environmentalists seek to boost TSCA ethics claim

Environmentalists are seeking additional records that they suggest show that the Trump administration's changes to the rules mirror Nancy Beck's past lobbying for ACC and do not reflect reasoned decision-making.



EPA

Lobbyist with hand in Pruitt trips tied to gas-rich nation

Kevin Bogardus and Hannah Northey, E&E News reporters Published: Friday, May 4, 2018



EPA Administrator Scott Pruitt, shown here in a 2017 file photo. Gage Skidmore/Flickr

The lobbyist who helped arrange EPA Administrator Scott Pruitt's trip to Morocco has another foreign client with natural gas interests, East Timor. The global law firm DLA Piper hired Richard Smotkin last November as a [subcontractor](#) to work on representing the government of the Democratic Republic of Timor-Leste, otherwise known as East Timor, according to Justice Department records. Smotkin's [registration form](#), filed in March, says he'll help "advise and assist" the South Pacific nation's government in the United States "with respect to strengthening U.S.-Timorese bilateral relations." That could include contact with executive branch officials, members of Congress and their staff, as well as people and groups "involved in governmental or public policy matters." East Timor became a sovereign state in 2002 after Indonesia relinquished control of the territory. The country already draws in revenue from fossil fuels, but it has been locked in negotiations with its southern neighbor, Australia, over an estimated \$50 billion offshore oil and gas field. Smotkin has ties to other foreign governments that have been linked to the EPA administrator as well. Smotkin, a former Comcast lobbyist, is considered close to Pruitt and played a part in the EPA chief's visit to Morocco last December, which has drawn scrutiny partly because of the agency's promotion of liquefied natural gas imports on the trip. Smotkin later won a contract to represent the North African country ([Greenwire](#), May 2). A Comcast spokeswoman said Smotkin left the telecommunications giant in July 2017. He was based in Philadelphia as a senior vice president for government affairs. For Comcast, Smotkin worked with state and local intergovernmental associations, which is where he ran into Pruitt as Oklahoma attorney general. It doesn't appear, however, that Smotkin has lobbied Pruitt or EPA on behalf of East Timor. From the end of August 2017 to the end of February this year, which covers Smotkin's work with DLA Piper, the firm [reported](#) emails, phone calls and meetings with city and state representatives, lawmakers and congressional staff on Capitol Hill, as well as State Department officials. The subject of many of those contacts is described as "U.S. - Timorese bilateral relations." Not listed in the DLA Piper report is any contact with EPA officials by the firm on behalf of East Timor. Asked if Smotkin contacted top agency officials, including Pruitt, as part of his lobbying work for East Timor, EPA spokesman Jahan Wilcox told E&E News, "No." A DLA Piper spokesman declined to comment when contacted for this story. E&E News could not reach Smotkin. The East Timor Embassy in Washington, D.C., didn't answer questions. Records show that Smotkin was paid \$20,000 this past February by the firm for his work on behalf of East Timor. He is still listed as an "active" foreign agent for the country in the Justice Department's database. East Timor has been a lucrative client for DLA Piper. The country has paid the firm more than \$3.2 million in fees and expenses for work from March 2017 to the end of this past February. The bulk of that work, however, has been for "non-[Foreign Agents Registration Act] registerable activities," according to the firm. DLA Piper's latest report filed with Justice says that included \$411,000 the firm spent for supporting East Timor's delegation at the U.N. General Assembly's opening session as well as helping

with the country's maritime conciliation proceedings with Australia.

Down Under

Like Pruitt's visit to Morocco, the administrator's canceled trip to Australia was to have included a stop at a LNG facility.

According to EPA emails won under Freedom of Information Act litigation by the Sierra Club, Smotkin was involved in planning for Pruitt's trip to Australia this past August, which was canceled as EPA grappled with last year's hurricane season.

According to a [draft itinerary](#) included in those documents, Pruitt was preparing to visit a zoo in Sydney before touring the Gladstone LNG facility in Queensland on Sept. 3, 2017, at the invitation of a ConocoPhillips executive. The Gladstone LNG facility taps into natural trapped in coal beds — gas that can be accessed by drilling or hydraulic fracturing — and liquefies it for export.

"Wendy King, Australian President for ConocoPhillips would like to bring Administrator Pruitt and members of his delegation to visit the LNG Plant in Gladstone," the email says.

"Visit would showcase the US-Australia relationship in developing gas as an export to the region/world."

Smotkin, according to the emails, worked with Matthew Freedman, CEO of the firm Global Impact Inc., and Pruitt's top aides to set up meetings in Australia.

Freedman is also treasurer of the American Australian Council, a group whose members include ConocoPhillips, Chevron Corp., BHP and Lockheed Martin.

"Rick and I will attend and will be present but will not be listed as members of the delegation," Freedman said in one of the [emails](#).

Wilcox with EPA said, "EPA's Office of International and Tribal Affairs organized and led the effort around Administrator Pruitt's trip to Australia.

"This trip was cancelled due to Hurricane Harvey, and it has not been rescheduled."

LNG connections

Australia and East Timor are currently eyeing production of offshore oil and gas, discussions that are directly tied to a historic maritime treaty that was signed in March at U.N. headquarters in New York.

While it remains unclear what role, if any, Smotkin played in those negotiations, DLA Piper's legal team [advised](#) East Timor leading up to the agreement being forged.

Notably, the contract lays out Australia and East Timor's entitlement and ownership of the untapped Greater Sunrise Basin, an offshore tract in the Timor Sea reportedly holding more than \$50 billion in gas.

But while the two countries agreed under the treaty to share upstream revenue from the offshore field, they failed to agree on exactly how to develop the site, and negotiations continue.

Partially driving the debate is that a coalition of companies hoping to tap the gas wants to use a floating liquefaction facility, technology the treaty didn't contemplate, said Nikos Tsafos, who researches energy at the Center for Strategic and International Studies, a Washington-based think tank.

While the East Timor government has asked for the gas to be brought ashore so its country can enjoy economic and financial knock-on effects, developers under the Sunrise Joint Venture — including Australia's largest independent oil and gas company, Woodside Energy Ltd., as well as ConocoPhillips, Royal Dutch Shell PLC and Osaka Gas Co. Ltd. — have proposed a floating facility given the site's distance from shore.

Whatever the outcome, Tsafos said it would take time to build the facility and hammer out the details.

"Realistically, it's a gas that even in the best of circumstances wouldn't show up for another five years in the Asian-Pacific market," he said.

EPA

Press deputy to leave

[Kevin Bogardus](#), E&E News reporter

Published: Friday, May 4, 2018

John Konkus, one of EPA's top press officials, is departing the agency.

Konkus is heading to the Small Business Administration to help lead communications for the agency. As deputy associate administrator in EPA's public affairs shop, his exit marks the fourth high-profile staff departure on Administrator Scott Pruitt's team this week.

Konkus has been involved with EPA from the very beginning of the Trump administration, serving on the president's transition and "beachhead" teams for the agency, as well as helping to guide Pruitt's confirmation in the Senate.

"From transition, working side by side with John as one of the 'sherpas' for Administrator Pruitt's nomination, through his work on the beachhead early at EPA, and as Deputy Associate Administrator, John has been a valuable member of the EPA communications team," EPA Chief of Staff Ryan Jackson said in a statement shared with E&E News.



John Konkus Konkus/LinkedIn

"Administrator Pruitt is grateful for John's service and wishes him well as he continues to serve the Trump Administration leading communications at the Small Business Administration."

Politico first reported Konkus was leaving EPA.

Konkus follows Liz Bowman, the head of EPA's public affairs shop, in exiting the agency. She announced yesterday that she was departing for a job on Capitol Hill as Sen. Joni Ernst's (R-Iowa) communications director.

Albert "Kell" Kelly, a senior adviser and close friend to Pruitt, is resigning, as well. Pasquale "Nino" Perrotta, a career EPA special agent who led the administrator's personal security detail, has also resigned from the agency.

EPA's staff departures come after Pruitt's appearance at two congressional hearings last week. In his testimony before lawmakers, the EPA chief often blamed his aides for various ethical lapses at the agency during his tenure.

Pruitt and EPA are already subject to several internal and congressional investigations. Many Democrats and a few Republicans have called on the administrator to resign or be fired by President Trump.

Konkus attracted controversy during his time at EPA. Unusual for a political appointee, the deputy press official was put in charge of reviewing EPA's grant solicitations, worth hundreds of millions of dollars each year ([Greenwire](#), Aug. 17, 2017).

Konkus played a role in cutting an EPA grant for the *Bay Journal*, a newspaper that focuses its coverage on the Chesapeake Bay. The agency later reversed that decision and restored funding to that grant ([Greenwire](#), March 2).

Konkus also won approval from EPA ethics officials to work outside the agency as a media consultant, generating scrutiny from lawmakers who questioned whether his clients conflicted with EPA's mission.

E&E News subsequently won a Freedom of Information Act appeal to reveal those clients, which were Konkus' former employer, Republican political consulting firm Jamestown Associates, and an unnamed Florida state representative. Other records, however, indicated that Konkus never did any work for them while at EPA ([E&E Daily](#), April 27).

WHITE HOUSE

Trade policies could spark another Depression — economists

[Christa Marshall](#), E&E News reporter

Published: Friday, May 4, 2018

More than 1,100 economists, including multiple Nobel economics prize winners, warned President Trump and Congress yesterday that protectionist trade policies on solar panels, vehicles, aluminum, steel and other products could set the United States up for another Great Depression.

In an open [letter](#), the economists said Americans "paid the price" in 1930, when similar warnings were ignored about the protectionist Smoot-Hawley Tariff Act that preceded the financial crash. The law raised tariffs on more than 20,000 imported goods.

"The undersigned economists and teachers of economics strongly urge you not to repeat that mistake," said the letter, which was signed by 15 winners of the Nobel Memorial Prize in Economic Sciences and economic advisers in the administrations of Presidents George H.W. Bush, George W. Bush, Clinton and Obama. The National Taxpayers Union led the effort to send the letter to members of Congress and the White House.

"Today, Americans face a host of new protectionist activity, including threats to withdraw from trade agreements, misguided calls for new tariffs in response to trade imbalances, and the imposition of tariffs on washing machines, solar components, and even steel and aluminum used by U.S. manufacturers," they wrote. The economists said the global economy is certainly different now than it was in the 1930s, particularly in the sense that trade is more important to the U.S. economy than it was then.

But they released text from a 1930 economist letter that they said still holds true. The earlier document said the vast majority of farmers would clearly "lose."

The White House did not respond to a request for comment.

Administration officials, including Treasury Secretary Steven Mnuchin, traveled to China this week to hash out trade disputes. This morning, China's official news agency Xinhua said "relatively big differences" remain on several issues after the meetings.

Since January, Trump has taken multiple trade actions with ripple effects across the energy sector, starting with a 30 percent tariff on imported solar cells and modules and withdrawal from the Trans-Pacific Partnership.

In March, the Office of the U.S. Trade Representative [announced](#) a list of about \$50 billion in products slated for tariffs, including batteries and nuclear reactors.

At the time, Trump accused China of engaging in "tremendous intellectual property theft."

The action prompted China to take retaliatory measures against U.S. soybeans.

Yesterday, Sen. Chuck Grassley (R-Iowa) released a statement saying that new reports of China halting all purchases of U.S. soybeans could cause severe economic damage.

"China is the largest consumer of U.S. soybeans, buying up nearly 60 percent of our soybean exports. If that market closes, it could be devastating for local communities across the Midwest," Grassley said.

Earlier this week, the administration delayed a decision about whether to impose tariffs on most steel and aluminum imports — which could affect manufacturers of everything from pipelines to solar racking systems. The administration announced a monthlong extension of tariff exemptions on aluminum and steel for Canada, Mexico and the European Union.

The Solar Energy Industries Association has projected that the solar tariffs alone could lead to the loss of 23,000 jobs this year.

It remains unclear whether the prediction will come true. SEIA said today it is collecting anecdotes and cited the case of Cypress Creek Renewables, which recently canceled \$1.5 billion in planned investments and stalled a third of their planned construction for 2018.

"In all we've heard from 20 companies, most of which asked to be anonymous, that have canceled projects, laid off workers or shut their doors," SEIA said.

There have been some signs of life in solar manufacturing since the tariffs, which administration officials have been quick to hail. In January, Chinese solar manufacturer JinkoSolar Holding Co. Ltd. said it was planning to open a solar manufacturing facility in the United States and tied the decision to tariffs SunPower Corp. also announced plans to buy SolarWorld Americas in a maneuver to get around Trump's tariffs ([E&E News PM](#), April 18).

White House deputy press secretary Lindsay Walters called that "further proof that the president's trade policies are bringing investment back to the United States."

Yet SEIA said additional manufacturing capacity, if it comes to pass, "still would not be nearly enough to meet the vast majority of U.S. demand."

Last month, a bipartisan group of House lawmakers introduced the first congressional bill to overturn Trump's solar tariffs ([E&E News PM](#), April 19).

EPA

House Dems want more time for comments on 'secret science'

[Sean Reilly](#), E&E News reporter



Published: Friday, May 4, 2018

Democratic Reps. Eddie Bernice Johnson of Texas and Paul Tonko of New York. House/Wikipedia

This article was updated at 2:27 p.m. EDT.

More than 60 House Democrats are urging EPA to allow more time for public feedback on a fiercely disputed proposal to revamp how the agency handles scientific research.

"EPA has the critical mission of protecting human health and the environment," Rep. Paul Tonko (D-N.Y.) and 64 other lawmakers [wrote](#) yesterday to EPA Administrator Scott Pruitt. "With this mission in mind, any significant change should go through a serious discussion, a series of public hearings and a robust comment period."

In the [proposed rule](#) published Monday, EPA set a 30-day comment period that ends May 30.

The Democrats are asking Pruitt to extend the comment period to at least three months.

Tonko is the top Democrat on the House Energy and Commerce Subcommittee on Environment; also signing the letter were Reps. Eddie Bernice Johnson (D-Texas), the ranking member of the House Science, Space and Technology Committee, and Frank Pallone (D-N.J.), the ranking member on the full Energy and Commerce Committee.

EPA press aides didn't respond to a request for comment this morning on the letter, which was released yesterday evening, or for an explanation of the agency's rationale in setting the 30-day comment period.

The Union of Concerned Scientists and the Natural Resources Defense Council, two advocacy groups critical of the proposed rule, have also sought a minimum 90-day comment period, accompanied by public hearings, according to written requests included in the regulations.gov docket. Yesterday, 43 other organizations, including the American Meteorological Society, Breast Cancer Action and the Humane Society of the United States, also asked for an extension, saying in a [letter](#) that "the current timeframe and opportunities for engagement are inadequate."

The proposal would effectively restrict EPA's reliance on scientific studies used in crafting significant regulations to those for which the underlying data and models are "publicly available in a manner sufficient for validation and analysis."

In an exchange with Tonko at a hearing last week by the Environment Subcommittee, Pruitt described the proposal as a transparency move to "ensure the data and methodology were also available to those" concerned about EPA rulemakings.

Tonko termed that description "hypocritical." Critics of the proposal view it as a stratagem for excluding research that could justify the need for tighter regulations to protect public health and the environment ([Climatewire](#), April 26). "Regardless of viewpoint, there is agreement that the proposed rule would be a significant change in how the agency considers science in policymaking," Tonko and the other House Democrats wrote in yesterday's letter. "Organizations, scientists, industries and members of the public deserve additional time to understand how this policy shift may impact them."

The proposal already appears to be on an administration fast track.

Late last month, the Office of Management and Budget wrapped up a required interagency review in four days, according to a revised completion date on the Reginfo.gov website ([Greenwire](#), April 27). That's far less than the average review time of 51 days for EPA rules since Pruitt became agency administrator in February 2017, according to data on the site.

e, [New York Times](#), May 4). — NB

AGRICULTURE

EPA to advance biostimulant guidance this summer — official

Marc Heller, E&E News reporter

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EPA will offer clues this summer on how it plans to regulate substances that boost plant growth but aren't usually considered fertilizers or pesticides, an agency official said yesterday.

Bob McNally, director of the Biopesticides and Pollution Prevention Division at EPA, told farm chemical industry leaders at a conference that the agency will issue guidance on biostimulants, taking public comment in June.

A formal submission to the White House Office of Management and Budget may come in August, McNally said at the AgChem Summit 2018 in Alexandria, Va.



Bob McNally AgChem Summit 2018

At issue is a wide range of biological treatments used on seeds and plants to stimulate growth. These include plant hormones, seaweed extract and acids derived from humus, for instance.

The treatments have surged in the last five years and aren't subject to a uniform federal standard, although states regulate them in varying ways. Companies that make and sell biostimulants are pressing to keep them off the list of substances that require registration with EPA.

While biostimulants don't necessarily replace fertilizer, they can cut down on its use by giving plants an extra boost from the start. Companies say the federal government could regulate them in a manner similar to the organic standards for food and farm practices.

McNally said the guidance being crafted at EPA still awaits final agency review before it can go to OMB. The EPA review could be completed in June, he said.

Because the industry has been clamoring for guidance, McNally said he wouldn't be surprised if groups ask EPA for an expedited review.

EPA has been working with the Department of Agriculture and industry associations, as well as the National Association of State Departments of Agriculture.

A group called the Biostimulant Coalition has formed to address legislative and regulatory priorities. The coalition believes a national standard would help the fast-growing industry, said a spokesman, David Beaudreau. Depending on what manufacturers claim a product does, regulators could decide it should fall under the Federal Insecticide, Fungicide and Rodenticide Act, he told E&E News.

That's the law under which pesticides have to be registered with EPA, written years before biostimulants came on the market.

"We think it would provide clarity on the claims that can be made," Beaudreau said.

For instance, manufacturers believe that a treatment that helps plants absorb fertilizer shouldn't fall under FIFRA, Beaudreau said. But if the biostimulant acts as a pesticide, that probably requires registration, he said.

The business has grown in part because states — which have primary responsibility for regulating fertilizer — have cracked down on their use in order to protect water quality. The regulatory environment and federal incentives for farmers to use new, environmentally friendlier technology, have fed interest in biostimulants, according to the coalition.

Congress has begun to step into the matter. The House Agriculture Committee's version of the 2018 farm bill ([H.R. 2](#)) would direct the Agriculture secretary to report on potential legislative and regulatory reforms "to ensure the expeditious and appropriate review, approval, uniform national labeling, and availability of plant biostimulant products to agricultural producers."

In addition, the bill offers a definition of a biostimulant, calling it a substance or microorganism that "stimulates natural processes" to boost crop quality and yield. The committee passed its bill last month, and it could come to the House floor in the next few weeks. The Senate Agriculture, Nutrition and Forestry Committee has yet to release its own version.

Beaudreau said his group hopes the provision survives in the final farm bill.

LOUISIANA

Fire at chemical plant forces evacuation

Published: Friday, May 4, 2018

A fire broke out yesterday at a chemical plant in south-central Louisiana, spewing thick smoke and forcing an evacuation.

No injuries were reported from the fire at a Flow-Chem Technologies LLC facility in Rayne, La., according to state police.

It is not yet known how the fire started at the plant, which primarily serves the oil and gas industry.

The blaze prompted an evacuation within a mile radius and closed a stretch of Interstate 10 ([AP/New Orleans Times-Picayune](#), May 3). — NS

WATER POLLUTION

Don't eat the fish, Minn. warns, after 3M contaminated lake

Published: Friday, May 4, 2018

Minnesota health officials warned yesterday against eating any fish from Lake Elmo near St. Paul after decades of water pollution by 3M Co.

It's the first time the state Department of Health has issued a total ban on fish from one of the state's more than 1,400 lakes.

The fish, officials said, contain dangerously high levels of perfluorooctane sulfonate (PFOS), which 3M used for years to make nonstick cookware and firefighting foam.

Officials also issued tough fish-eating restrictions for four other lakes and parts of the Mississippi River.

3M settled with Minnesota earlier this year for \$850 million over claims of water pollution spanning 50 years ([Greenwire](#), Feb. 21).

Lake Elmo Mayor Mike Pearson wants his town to get its share of that money as soon as possible.

"This is certainly a problem," he said. "It is discomforting to the whole city, and fishermen in particular" (Bob Shaw, [St. Paul Pioneer Press](#), May 3). — NS

INDIA

Pollution, insect dung turn Taj Mahal greenish

Published: Friday, May 4, 2018

Insect dung and pollution are turning the Taj Mahal just a bit green, yellow and black, according to an environmental lawyer. M.C. Mehta took the issue up with India's Supreme Court. "You all appear to be helpless," said a judge with the court after hearing from the lawyer. "Money should not be the consideration. We might order you to hire experts from within India or abroad. We need to save it," the judge said, according to Indian media. The court told the central government and Uttar Pradesh state officials to report back with a plan by Wednesday. Air pollution is a big problem in the city of Agra, an industrial center. Experts agree with Mehta that the discoloration is caused by pollution and breeding insect swarms. "The white sheen is disappearing, and instead of that if the green color, the brown color, the other colors ... are visible, then what is the reason? The reason is that the pollution has become alarming," Mehta said ([AP/San Antonio Express-News](#), May 4). — **CS**

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